IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11261 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SMT.M.M.YAGNIK

Versus

DIRECTOR

Appearance:

1. Special Civil Application No. 11261 of 1993

MR IS SUPEHIA for Petitioner No. 1

Mr. LR Poojari, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 29/03/2004

ORAL JUDGEMENT

The petitioner, who was facing departmental inquiry was called upon to remain present for the purpose of proceeding further with the departmental inquiry pursuant to chargesheet dated 23rd October 1991, had preferred the present Special Civil Application under Article 226 of the Constitution of India challenging the

said communication contending inter alia that the petitioner was chargesheeted on 23rd October 1991 for holding an enquiry in respect of 13 allegations stated in the said statement of allegations. It is the case of petitioner that by letter dated 24.11.1991 the petitioner replied to the aforesaid chargesheet denying the allegations levelled in the said show cause notice. That by show cause notice dated 26th March 1993 the respondent No.1 called upon the petitioner to show cause as to why one increment with future effect should not be withheld in view of the charges found proved against her. According to her, only charges No. 1 to 4 were proved and therefore the aforesaid show cause notice dated 26th March 1993 was served. After the aforesaid show cause notice dated 26th March 1993 the petitioner by her letter dated 8th April 1993 replied that no punishment can be imposed upon her. It seems that subsequently it was found that it is not a case for imposing minor penalty and this is a case where a major penalty might be imposed and therefore it was decided to hold a regular departmental inquiry and therefore the respondent No.1 by letter dated 20th September 1993 informed the petitioner that an inquiry into the chargesheet dated 23rd October 1991 will be held against her and she was directed to remain present for a preliminary hearing on 25th October 1993, which has given rise to the present Special Civil Application.

2. This Court has admitted this Special Civil Application and has granted ad-interim relief restraining respondent No.2 from proceeding with the Departmental Enquiry as per letter dated 20th September 1993. Subsequently, the said ad-interim relief was also confirmed and therefore till date the departmental inquiry which was initiated pursuant to chargesheet dated 23rd October 1991 has remained stayed till date.

3. An affidavit-in-reply has been filed by one B.P. Thaker, Deputy Director of Respondent, dated 17.6.1994 in which he has submitted that no final decision was taken pursuant to the charges levelled in the chargesheet dated 23rd October 1991. The statement of defence by petitioner was not accepted by respondent No.1 and in the preliminary inquiry it was prima facie found that the petitioner is guilty of the charges levelled against her. It is also submitted in the said reply that though the letter was issued asking for her explanation, thereafter her explanation was found not justifiable it was decided to further proceed with the departmental inquiry and thereafter respondent No.2 has been appointed to inquire into the allegations levelled against the petitioner and by virtue of order dated 20th September 1993 regular

inquiry is being initiated against the petitioner. It has also been pointed out that the petitioner has not been punished so far. It is also submitted that considering the defence submitted by the petitioner, the respondent No.1 was not prima facie satisfied with the same and therefore the impugned order dated 20th September 1993 was passed and therefore it was requested to dismiss the aforesaid Special Civil Application and vacate the ad-interim relief granted earlier.

4. I have heard the learned advocates appearing for the parties. The facts emerging from the record are that a chargesheet dated 20th October 1991 was issued to the petitioner by respondent No.1 for holding a departmental inquiry in respect of 13 allegations stated in the statement of allegations, for which explanation was sought for and on the basis of the explanation submitted by the petitioner a show cause notice dated 20th September 1993 was issued to the petitioner calling upon her to show cause as to why one increment should not be withheld, and that in view of the charges proved against her, i.e., with regard to allegations No. 1 to 4, stoppage of one increment with future effect is a minor penalty as envisaged under the provisions of Bombay Civil Services Rules and for which the procedure which is required to be followed for imposing minor punishment is required to be followed, i.e., show cause notice and further departmental enquiry is required to be held. However, subsequently on the basis of the defence statement submitted by the petitioner it was found by respondent No.1 that this is not a case where minor penalty is required to be imposed, but a major penalty might be imposed and therefore it was decided to proceed with holding of departmental inquiry and therefore by notice/communication dated 20th September 1993 the petitioner was informed that an inquiry into the chargesheet dated 23rd October 1991 will be held and the petitioner was asked to remain present for preliminary hearing. By communication dated 20th September 1993 calling upon the petitioner to remain present for preliminary inquiry cannot be said to be in any way arbitrary or malafide. When it was found by the authority that a regular departmental inquiry was required to be initiated and the petitioner was called to remain present in the inquiry, there was no reason on the part of the petitioner not to remain present and challenge the same. It is pertinent to note that on the basis of the chargesheet dated 23rd October 1991, no final decision was taken and no punishment has been imposed. Under the circumstance,it cannot be said that when the departmental inquiry was not concluded, in

calling the petitioner to remain present in the inquiry any illegality has been committed by the respondents. Under the circumstances, there is no substance in this Special Civil Application, which is required to be rejected. Accordingly, it is rejected. Ad-interim relief granted earlier stands vacated forthwith. THe petitioner is directed to cooperate with the respondents in conduct of departmental inquiry. The respondents are directed to complete the departmental inquiry within a period of 6 months from the date of receipt of writ of this order as the chargesheet is of the year 1991 and because of interim relief granted by this Court, the same could not be concluded. With this direction, Rule is discharged. The Office is directed to send the writ immediately.

rmr. [M.R. Shah, J.]